

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

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In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51
	)	
Establishing Just and Reasonable Rates for Local Exchange Carriers	)	WC Docket No. 07-135
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Developing a Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Lifeline and Link Up	)	WC Docket No. 03-109
	)	

**REPLY COMMENTS OF NOBELTEL LLC**

NobelTel LLC (“Nobel”), by its attorneys, hereby submits these reply comments in the above-captioned proceedings.<sup>1</sup> Nobel is a provider of interstate and international communications services, including prepaid calling services.

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<sup>1</sup> *In the Matter of Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link Up*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, GN Docket No. 09-51, CC Docket Nos. 01-92, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, FCC 11-13 (rel. Feb. 9, 2011).

Nobel strongly disagrees with the assertions of AT&T Inc. (“AT&T”)<sup>2</sup> that the 2006 order issued by the Commission regarding the application of Part 69 interstate access charges<sup>3</sup> held that such charges apply to “all” prepaid calls, including those originated by dialing a local number. As several other carriers have noted,<sup>4</sup> the 2006 Order expressly addressed only calls originated by dialing 8YY numbers. The Commission did not address whether or how Part 69 applied to locally-dialed calls, thereby resulting in a petition for reconsideration submitted by Arizona Dialtone Inc., which remains pending.<sup>5</sup> The applicability of Part 69 access charges to prepaid calls originated via local numbers remains an issue of first impression for the Commission.

As it considers this issue, the Commission need look no further than AT&T’s own conduct to confirm that Part 69 does not apply to locally-dialed prepaid calls, and that no interstate switched access charges are owed to AT&T for these calls. Like other prepaid carriers, Nobel received threatening letters from AT&T in 2009 (and thereafter) demanding that Nobel immediately pay many thousands of dollars in interstate access charges. In response to those letters, Nobel requested that AT&T identify the specific service in AT&T’s switched access tariffs that Nobel purportedly purchased, and to verify the specific amounts that Nobel allegedly owed to AT&T. AT&T was unable to do so. Further, given that AT&T’s payment demands

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<sup>2</sup> See Comments of AT&T, Inc., WC Docket Nos. 10-90, 07-135, 05-337, 03-109, GN Docket No. 09-51, CC Docket Nos. 01-92, 96-45, at 36, 38 (filed Apr. 1, 2011) [hereinafter “AT&T Comments”].

<sup>3</sup> See *Regulation of Prepaid Calling Card Services*, WC Docket No. 05-68, Declaratory Ruling and Report and Order, FCC 06-79, 21 FCC Rcd 7290 (2006) [hereinafter “2006 Order”].

<sup>4</sup> See Prepaid Card Provider Comments, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, GN Docket No. 09-51, CC Docket Nos. 01-92, 96-45, at 6-8 (filed Apr. 18, 2011) [hereinafter “Prepaid Card Provider Comments”].

<sup>5</sup> See Arizona Dialtone Inc. Petition for Reconsideration, *Regulation of Prepaid Calling Card Services*, WC Docket No. 05-68 (filed August 31, 2006).

covered a period in excess of two years, Nobel asked AT&T to explain how its threatening letters were consistent with the Commission's policy against the unreasonable back-billing of charges pursuant to section 201(b) of the Communications Act.<sup>6</sup> Once again, AT&T was unable to do so.

Rather than identify the specific tariff provisions which it believed applied to the local dialing numbers Nobel obtains from competitive local exchange carriers ("CLECs"), AT&T simply referred Nobel to the entirety of its switched access tariffs nationwide. These tariffs contained thousands of pages of provisions governing many different services. Upon review of these materials, it quickly became apparent why AT&T did not identify any specific tariff provisions that apply to these locally-dialed prepaid calls. Quite simply, there aren't any.

To the contrary, AT&T's tariff provisions unequivocally repudiate its attempt to collect access charges from Nobel for prepaid calls that AT&T alleges were originated via a CLEC's local numbers. In particular, AT&T's tariffs commonly provide, among other things, that: (1) AT&T will provide interstate switched access service only in response to an Access Order;<sup>7</sup> (2) AT&T will only engage in the "current" billing of switched access services;<sup>8</sup> (3) AT&T will only provide service to carriers that provide their Carrier Identification Code ("CIC");<sup>9</sup> and (4) AT&T

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<sup>6</sup> See, e.g., *The People's Network, Inc. v. AT&T Co.*, File No. E-92-99, Memorandum Opinion and Order, DA 97-684 (rel. Apr. 10, 1997) (billing delays beyond 120 days violate section 201(b)).

<sup>7</sup> AIT 2, Ameritech Operating Companies, Interstate Access Tariffs (Midwest), Tariff F.C.C. No. 2, § 2.1.1(F) (requiring access services to be ordered pursuant to Section 5 of AT&T's tariffs); *id.* § 5.1 (AT&T's tariffs define "Access Order" as "an order to provide the customer with Switched Access Services. . .").

<sup>8</sup> *Id.* § 2.4.1(B) ("The Telephone Company shall bill on a current basis all charges incurred by . . . the customer under this tariff.").

<sup>9</sup> *Id.* § 6.3.2(D); *id.* § 2.6 (CIC is defined in AT&T's tariffs as "a numeric code currently used to identify customers who purchase FGB and/or FGD Access Services").

will only provide service to a “customer” at its “customer premises.”<sup>10</sup> Nobel asked AT&T to show how these four requirements were satisfied and, more generally, to show how its interstate switched access tariffs justified the payments it was demanding from Nobel. AT&T was unable to do so.

The fact of the matter is that AT&T’s interstate switched access tariffs do not include any service that applies in the circumstances of a carrier that obtains local numbers from a CLEC to provide prepaid calls. Indeed, AT&T’s comments in this proceeding effectively concede that its tariffs do not apply to locally-dialed prepaid calls routed to a CLEC, and that prepaid carriers have not ordered or received AT&T service under any existing tariff provisions. AT&T argues that these carriers have sought to “avoid[]” its tariffs, and complains that these carriers should have “forthrightly” ordered AT&T’s Feature Group A service rather than purchase local numbers from a CLEC competitor to AT&T.<sup>11</sup> In layman’s words, this is AT&T’s admission that its tariffs do not include any provisions governing locally-dialed prepaid calls, and that prepaid carriers have not ordered the only service in AT&T’s tariffs that conceivably could have been used to originate traffic via local numbers.

The Commission should condemn AT&T’s strong-arm tactics of seeking payment from carriers for access services that they neither ordered nor received. In a recent case, the Commission held, in response to a complaint by AT&T, that it was unlawful under sections 201(b) and 203(c) of the Communications Act for a carrier to assess charges that are not

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<sup>10</sup> *Id.* §§ 6.1; *id.* § 2.6 (“customer” is defined in AT&T’s tariffs as “any . . . entity which subscribes to the services offered under this tariff, including both Interexchange Carriers (ICs) and End Users”).

<sup>11</sup> AT&T Comments at 39.

authorized by its federal tariff.<sup>12</sup> AT&T has done the same thing here. The charges AT&T has demanded Nobel pay are not today, and never have been, authorized by its federal tariffs.<sup>13</sup>

Apart from violating sections 201(b) and 203(c), AT&T's unsuccessful effort to shoehorn locally-dialed prepaid calls into its interstate switched access tariffs disproves AT&T's contention that such calls are subject to Part 69. All parties agree that locally-dialed prepaid calls are governed by the reciprocal compensation provisions in section 251(b)(5) unless they are subject to the exemption in section 251(g), which permits the "continued enforcement" of pre-1996 Act arrangements. Given the absence of any provisions in AT&T's interstate switched access tariffs that apply to calls originated via local numbers issued by non-incumbent local exchange carriers, there is not even a colorable argument that such calls have been governed by pre-1996 Act arrangements.

As noted above, it is an issue of first impression for the Commission to determine what compensation requirements, if any, should apply to locally-dialed prepaid calls. As other prepaid carriers have already indicated,<sup>14</sup> the reciprocal compensation regime offers the most efficient solution consistent with the accelerating industry trend towards an all-IP network. Given the widespread agreement from AT&T and many other carriers that the Part 69 access charge regime

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<sup>12</sup> *AT&T Corp. v. YMax Communications Corp.*, File No. EB-10-MD-005, Memorandum Opinion and Order, FCC 11-59, 52 CR 1198 (rel. Apr. 8, 2011).

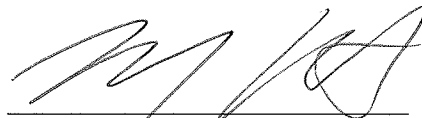
<sup>13</sup> AT&T's Janus-like approach to this issue also is evident by comparison to the position it took in the *Virginia Arbitration* proceeding. *See In the Matter of Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act*, CC Docket No. 00-251, Memorandum Opinion and Order, DA 02-1731, 17 FCC Rcd 27039 (2002). In that case, AT&T argued that traffic exchanged between a CLEC and an ILEC in the provision of virtual foreign exchange service was governed by the reciprocal compensation provisions in section 251(b)(5). *Id.* at 27177-27179. The Commission correctly ruled in favor of AT&T in that instance, which repudiates AT&T's position with respect to imposing interstate switched access charges on locally-dialed prepaid calls.

<sup>14</sup> *See Prepaid Card Provider Comments* at 23-24.

requires fundamental reforms, Nobel submits that subjecting locally-dialed prepaid calls to this regime in its dying days would be unfair to industry participants, defeat the reasonable reliance expectations of prepaid carriers based on sections 251(b)(5) and (g), send inefficient economic signals to carriers, and generate still more time-consuming, expensive and needless litigation.

Respectfully submitted,

**NOBELTEL LLC**

A handwritten signature in black ink, appearing to read 'R. Aamoth', written over a horizontal line.

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